****

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.11464 of 2006

Date of decision: 1.3.2007

State of Punjab and another ...Petitioners

Versus

M/S Mahavir Vanaspati Company and another ...Respondents

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Ms. Urvash Dhugga, Assistant Advocate General, Punjab
for the petitioners.

Mr.K.L.Goyal, Advocate for respondent No.1.

****

RAJESH BINDAL, J.

This is a writ petition filed by the State of Punjab challenging order dated May 22, 2006 passed by the Value Added Tax Tribunal (for short "the VAT Tribunal") in rectification application No.11 of 2006-07 whereby the VAT Tribunal accepted the rectification application filed by the respondent-dealer.

Briefly facts of the case, as pleaded in the petition, are that the respondent-dealer is engaged in the business of manufacture and sale of Vanaspati Ghee. The final product is sold either within the State or out side the State of Punjab. Some of the manufactured goods are also transferred to other States by way of transfer other than by way of sales. For the assessment year 2000-01, the dealer disclosed gross turn over of Rs. 28,12,60,019.67 in its return. Out of the gross turn over, the amount of Rs. 25,21,85,896.94 representing inter-state stock transfer were deducted by

****

the dealer claiming the transaction to be against 'F Forms'. While framing the assessment, Assessing Authority accepted 66 statutory 'F Forms' submitted by the dealer to claim deduction of Rs. 25,19,16,609.37 as transfers otherwise than by way of sales, vide order dated August 14, 2001.

It is further pleaded that after the assessment was framed, it came to the notice of the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala from the Sales Tax authorities at Delhi, where stock transfers have been made, that the registration certificates of dealers to whom the goods had been transferred stood cancelled and the 'F Forms' so submitted by the dealers were not even issued to them. Considering this to be an error in the order of assessment, the Additional Excise and Taxation Commissioner exercising powers conferred on him under Section 21 of the Punjab General Sales Tax Act, 1948 (for short "the State Act") issued suo-moto notice dated February 22, 2002 to the dealer for examining the legality and propriety of the order of assessment dated August 14,2001. Reason mentioned in the notice was that on examination of records, it was revealed that the claim of consignments sales against 'F Forms' was not found genuine. Show cause notice issued to the dealer was duly replied to by the assessee raising various pleas which included want of jurisdiction on the part of Revisional Authority to issue notice under Section 21 of the State Act. The Revisional Authority after considering the contentions of the dealer recorded a finding that the 'F Forms'; submitted by the dealer, were found to be forged on enquiry from Delhi authorities. Accordingly, it was opined that the deduction granted to the dealer, treating the transfers as otherwise than by way of sales, was absolutely inadmissible. In this factual matrix, the Revisional Authority vide order dated July 30, 2002 remanded the matter to the Assistant Excise and Taxation Commissioner, Ludhiana-III to make inquiries and decide the case within a period of two months. Against the order passed by the Revisional Authority, the dealer preferred an appeal before the Sales Tax Tribunal, Punjab, which was rejected vide order dated July 22, 2003. It is also mentioned that Civil Writ Petition No. 3441 of 2004 filed by the petitioner thereafter, to challenge the order passed

****

by the Revisional Authority as well as the Sales Tax Tribunal, was also dismissed by this Court vide order dated March 2, 2004. It was thereafter that an order was passed by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, Ludhiana-III under the Central Sales Tax Act, 1956 (for short "the Central Act") thereby rejecting the claim of transfer of goods other than by way of sales on account of defective 'F Forms'. In appeal against the order of Revisional Authority, the dealer failed before the the Sales Tax Tribunal, Punjab, however, in rectification application moved by the dealer, the plea of the assessee was accepted. It is this order of the VAT Tribunal which is impugned by the Revenue in the present writ petition.

In reply filed by the dealer, a preliminary objection has been raised regarding availability of effective alternative remedy of reference under Section 22 of the State Act. It is further pleaded that the transfer of goods out side State other than by way of sales can very well be proved by any evidence in the absence of 'F Forms', which was not mandatory at the relevant time and the dealer had liberty to prove the transactions of transfer other than by way of sales to the satisfaction of the Assessing Authority by leading any other evidence. It is further pleaded that the orders passed by the authorities below are totally in violation of principles of natural justice as neither the report of Delhi Sales Tax Authorities was ever confronted to the dealer nor any gazette notification showing cancellation of registration certificates or the loss of 'F Forms' was confronted. The consigner cannot be held responsible for any misdeeds at the end of consignee which are beyond his control. It is further pleaded that the petitioner has further failed to point out that in case the 'F Forms' in question had not been issued to the Delhi dealers by the authorities there to whom the same had been issued as per records, the exercise of powers under Section 21 of the State Act was also contested. Still further it is submitted that the Assistant Excise and Taxation Commissioner, to whom the matter was remanded by the Additional Excise and Taxation Commissioner exercising his revisional jurisdiction, could not have exercised the revisional jurisdiction once again

****

as matter was remanded to him to be dealt with as an Assessing Authority and not as Revisional Authority. A Revisional Authority is not competent to remand the matter to another Revisional Authority. Still further it is submitted that initial notice to the dealer was issued under the State Act without invoking the powers under the Central Act and at the most the case remanded was under the State Act only, but after the remand the Assistant Excise and Taxation Commissioner while exercising the powers of Revisional Authority without there being any show cause notice issued for revision of the order passed under the Central Act could not have touched the order of assessment passed under the Central Act. Finally, it is prayed that the writ petition being devoid of merits deserves to be dismissed.

We have heard Ms. Urvashi Dhugga, learned Assistant Advocate General, Punjab appearing on behalf of the State and Shri K.L.Goyal, learned counsel appearing on behalf of the respondent-dealer and with their assistance have perused the relevant documents on record.

Primary contention raised on behalf of the counsel for the petitioner is that the exercise of rectification jurisdiction by the VAT Tribunal was not in consonance with the provisions of the State Act as it merely amounted to change of opinion over and above the opinion already expressed by the learned Member of the Tribunal at the first instance. In case the assessee was aggrieved by order passed by the Tribunal at the first instance, he could have availed of remedy of reference or any other remedy in accordance with law but could not seek rectification thereof being no error apparent on the face of the record. It is further submitted that the Tribunal could not have held the show cause notice issued to the dealer to be invalid once the validity thereof had already been upheld up to this court in writ petition filed by the dealer. Learned counsel for the petitioner also referred to and relied upon a Single Bench judgment of this court in **Jainson Hosiery Industries Vs. Assessing Authority and others (1991) 83 STC 26 (P&H).**

On the other hand, while pressing the plea of effective alternative remedy being available to the petitioners, learned counsel for the

****

dealer submitted that in the facts and circumstances of the case, exercise of rectification jurisdiction by the VAT Tribunal was in conformity with law and within four corners of powers conferred on it. He further submitted that even on merits exercise of jurisdiction by the authorities in passing various orders against the dealer has resulted in misuse of process of law and sheer harassment to the dealer. What necessitated the filing of the rectification application was non consideration by the VAT Tribunal of the contentions raised by the counsel for the dealer so as to enable the dealer to effectively pursue its further remedies. He also relied upon the various judgments such as **Thomson Press (India) Ltd. and another Vs. State of Haryana and another (1996) 100 STC 417 (P&H), Nav Bharat Enterprises Ltd. Vs. The Sales Tax Officer, Ward No.18, New Delhi and others (1987) 66 STC 252 (Delhi), State of Orissa Vs. Orissa Small Industries Corporation (1987) 67 STC 262 (Orissa), M/S Kanha Vanaspati Ltd. Vs. Commissioner of Trade Tax (2002) 19 PHT 473 (All), Ashok Leyland Ltd. Vs. State of T.N. And another (2004) 3 Supreme Court Cases 1, Haryana Agro Industries Corporation Limited Vs. State of Haryana and others (2002) 125 STC 18 (P&H), M/S Hari Chand Rattan Chand & Co. Vs. The Deputy Excise and Taxation Commissioner (Additional) Punjab AIR (57) 1970 Punjab and Haryana 206, Commissioner of Income-Tax Vs.Durga Engineering and Foundry Works (2000) 245 ITR 272 and Commissioner of Income-Tax Vs. Ideal Engineers (2001) 251 ITR 743.**

Having heard learned counsel for the parties at length, we find that ends of justice in the present case would be met in case we hear the writ petition on merits by over ruling preliminary objection raised by the counsel for the dealer regarding availability of effective alternative remedy of reference under Section 22 of the State Act to this Court as in case the issues are not considered at this stage, then it will unnecessarily delay the proceedings, which in our view may result in miscarriage of justice. Still further, as is expressed in the following paras, in the present case the dealer had not been afforded effective opportunity of hearing by the authorities

****

below, there being violation of principle of natural justice, accordingly, while overruling the preliminary objection we deal with the issues involved in the present writ petition on merits.

What transpires from the pleadings and contentions raised by learned counsel for the parties is that the Additional Excise and Taxation Commissioner exercising his revisional jurisdiction under Section 21 of the State Act issued show cause notice to the dealer proposing to disallow consignment sales against 'F Forms' treating the same to be ingenuine. The notice was under the provisions of the State Act only. A perusal of the order of assessment dated August 14, 2001, which is sought to be revised shows that the turnover of consignment sales against 'F Forms', had been dealt with in the order passed under the State Act where deduction on that account had been granted. The dealer raised objection regarding the jurisdiction exercised by the Additional Excise and Taxation Commissioner under Section 21 of the State Act. However, the Additional Excise and Taxation Commissioner-cum-Revisional Authority, without even dealing the preliminary objection regarding jurisdiction found the claim of the assessee for consignment transfers against 'F Forms' to be partially inadmissible and remanded the case to the Assistant Excise and Taxation Commissioner, Ludhiana-III for inquiry and verification of the claim. Issuance of notice and remand of the case by the Revisional Authority for framing the assessment to the Assistant Excise and Taxation Commissioner was upheld upto this Court. Thereafter, the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, Ludhiana-III after referring to the proceedings initiated by the Additional Excise and Taxation Commissioner under Section 21 of the State Act and remand of case by him passed an order under the Central Act rejecting the claim of consignment transfers on account of 'F Forms' having not been issued to the consignees by the authorities at Delhi and accordingly raised a demand. It is important to notice here that initially proceedings initiated by the Revisional Authority were under the State Act and not under the Central Act. The question of consignment transfers was not even dealt with in the order of assessment

****

under the Central Act where total turn over assessed was Rs. 32,243.75.

The issues raised by the dealer in appeal against the order passed by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority with regard to order being bad on various counts, namely; exercise of revisional jurisdiction second time and the order having been passed under the Central Act whereas no proceedings were initiated for the same in earlier proceedings and the remand order having been passed under the State Act in addition to violation of principle of natural justice. However, the Tribunal did not deal with legal issue regarding jurisdiction to pass an order under the Central Act while rejecting the revision of the dealer. Similarly even the issue regarding passing of the subsequent order after remand by the Revisional Authority to the Assessing Authority also as Revisional Authority was also not dealt with. Regarding violation of principle of natural justice as well, learned counsel for the petitioner could not satisfy this Court as to how and in what manner the dealer was confronted with the material found by the petitioners on inquiry from Delhi authorities and to what extent the dealer could be burdened with liability on that account.

Though the order passed in rectification by the VAT Tribunal, Punjab is not very happily worded, the rectification order proceeds with the assumption that the subsequent order passed by the Assistant Excise and Taxation Commissioner was in exercise of his revisional jurisdiction as the same is evident from the title and stamp of the officer signing the order and the revisional jurisdiction having been exercised for the second time even though the matter was remanded to the Assistant Excise and Taxation Commissioner to be dealt with as Assessing Authority, the same was faulted with and the order passed by the Tribunal was rectified. Resultantly the order passed by the Assistant Excise and Taxation commissioner purportedly as revisional authority was set aside being beyond the remand directions but we find that though the proceedings in the present case had travelled to various authorities in appeal/revision/rectification and even to this Court at one stage but still the real issues in the present case have not

****

been gone into.

Though no fresh notice had been issued by the Assistant Excise and Taxation Commissioner after remand of the case by the Additional Excise and Taxation Commissioner exercising revisional jurisdiction but still mentioning in the order that the same is being passed as Assistant Taxation Commissioner-cum-Revisional Authority has certainly prejudiced the dealer as against the order of Assessing Authority he had the remedy of appeal and revision, however, against the order passed by the Revisional Authority, he had only one remedy of revision to the Tribunal.

In view of the factual matrix narrated above, we are of the considered view that the ends of justice in the present case would be met in case not only the impugned order dated May 22, 2006 passed by the VAT Tribunal in rectification application (Annexure P-11) but even the order dated December 1, 2005 (Annexure P-10) passed by the Sales Tax Tribunal and further order dated April 16, 2004 (Annexure P-9) passed by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, Ludhiana-III are set aside and matter remitted back to the Assistant Excise and Taxation Commissioner, Ludhiana-III to be dealt with in accordance with law in terms of the order dated July 30, 2002 passed by Additional Excise and Taxation Commissioner-cum-Revisional Authority. Respondent assessee, through its counsel is directed to appear before the authority concerned on March 19,2007 for further proceedings. We hope that thereafter proceedings shall be completed by the concerned authority without any delay.

The writ petition is disposed of in the manner indicated above with no order as to costs.

(Rajesh Bindal)
Judge

March 01 ,2007
Pka

(M.M.Kumar)
Judge

****